

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Michael D. Benson,

Civil No. 09-2792 (DWF/JJG)

Petitioner,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

State of Minnesota,

Respondent.

Michael D. Benson, *Pro Se*, Petitioner.

Kenneth R. White, Esq., Law Office of Kenneth R. White; and Kimberly R. Parker and Matthew Frank, Assistant Attorneys General, Minnesota Attorney General's Office; and Michael K. Riley, Esq., MacKenzie & Gustafson, counsel for Respondent.

This matter is before the Court upon Petitioner Michael D. Benson's ("Petitioner") objections to Magistrate Judge Jeanne J. Graham's Report and Recommendation dated March 12, 2010, recommending that Petitioner's petition for a writ of habeas corpus be denied and that this case be dismissed with prejudice. (Doc. No. 14.) Respondent State of Minnesota has filed a memorandum in support of Magistrate Judge Graham's Report and Recommendation¹ (Doc. No. 15). On April 20, 2010, Petitioner filed an Objection to

¹ The Report and Recommendation did not address the issue of mootness since the Petitioner was in custody pursuant to a state sentencing order at the time he filed his petition. (Report and Recommendation at p. 2.) However, it should be noted that since the issuance of the Report and Recommendation, Petitioner has been released from custody on the criminal charge because his 46-month sentence with credit for time served

(continued...)

Respondent's Memorandum of Support to Magistrate's Report and Recommendation
(Doc. No. 17).

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of counsel, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Petitioner's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Petitioner Michael D. Benson's objections (Doc. No. [14]) to Magistrate Judge Jeanne J. Graham's Report and Recommendation dated March 12, 2010, are

DENIED.

2. Magistrate Judge Jeanne J. Graham's Report and Recommendation dated March 12, 2010 (Doc. No. [13]), is **ADOPTED**.

3. Petitioner Michael D. Benson's petition for a writ of habeas corpus (Doc. No. [1]) is **DENIED** and this case is **DISMISSED WITH PREJUDICE**.

¹(...continued)
expired. However, without reaching the issue of whether the petition should therefore be denied as moot, the Court has decided this case on the merits.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 29, 2010

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge